

**INFORMATION AND INSTRUCTIONS
FOR FILING A PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

You should follow these instructions carefully. The failure to do so may result in your petition not being filed and considered by the court, or at least being delayed. If you add additional pages, be sure to identify what is being continued or the number of the additional ground(s).

A. General Information About The Petition for Writ of Habeas Corpus Form:

1. The petition for writ of habeas corpus form is designed to help you prepare a petition seeking relief pursuant to 28 U.S.C. § 2254. Local Special Rule 3-1 requires the use of the petition for writ of habeas corpus form by anyone not represented by counsel, that is, if they are proceeding *pro se*. For your petition to be considered by the District Court, it must be typewritten or legibly handwritten. (See Rule 10-1). **NOTE: DO NOT WRITE ON THE BACK OF ANY OF THE PAGES;** any writing on the back of any page might not be considered by the court. All information must be clearly and concisely written, **only in the space provided on the form, and only one line of writing per line provided. Do not write in the margins.** If needed, you may attach four additional pages of standard letter size paper to state additional grounds. Be sure you make clear to which ground the continued information applies. If you add more than the four pages, you must file with the petition a motion for leave of court (permission) to file the longer than normal petition.

2. You must sign the petition, which constitutes a certificate that: 1) you have read the petition; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. You should review Rule 11 of the Federal Rules of Civil Procedure. Note also that Rule 11 provides for the imposition of sanctions if the petition is signed in violation of the rule. Additionally, if a court finds that you have engaged in sanctionable conduct (such as pursuing a frivolous or malicious action), and if you are under the control of the Nevada Department of Prisons, you can be disciplined under the Prisons' Code of Penal Discipline, which can include all sanctions authorized under the Code including punitive confinement and the loss of good time credits. Lastly, the petition must be signed under penalty of perjury. A false statement or answer to any question in the petition can subject you to federal prosecution (28 U.S.C. § 1746 and 18 U.S.C. § 1621), as well as state prosecution (Nev. Rev. Stat. § 199.145).

3. If you do not meet the requirements for proceeding *in forma pauperis*, then the full filing fee of five dollars (\$5.00) must accompany the petition.

4. If you are currently residing in a county that is part of the unofficial Northern Division, then you should mail your petition to the Reno address; if you are currently residing in a county that is

part of the unofficial Southern Division, then you should mail your petition to the Las Vegas address. The counties in the unofficial Southern Division are Clark, Esmeralda, Lincoln and Nye. All other counties are in the unofficial Northern Division. See Local Rule LR IA 6-1 and Local Rule LR 8-1. Once your case is filed, a copy will be sent to you by the Clerk of the Court.

When you have completed writing your petition, you should mail ONLY THE ORIGINAL with the proper filing fee or a motion to proceed *in forma pauperis* (see the separate "Information and Instructions for Filing a Motion for Leave to Proceed *In Forma Pauperis*" to determine whether you need to submit a filing fee) to:

Clerk, U.S. District Court
District of Nevada
400 South Virginia Street
Suite 301
Reno, Nevada 89501

OR

Clerk, U.S. District Court
District of Nevada
333 Las Vegas Boulevard South
Room 1334
Las Vegas, Nevada 89101

5. Except for the initial petition and initial motion for leave to proceed *in forma pauperis* submitted to commence an action, you must write the correct case number on the front page of all documents you submit to the court. In addition, you must furnish the opposing party or their attorney (if there is one) with a copy of any document submitted to the court. Each original document (except the initial petition and initial motion for leave to proceed *in forma pauperis*) must include a certificate of service stating the date a copy of the document was mailed to the opposing party or their attorney, and the address to which it was mailed. Pursuant to Local Rule LR 5-1 any pleading (except the initial petition and initial motion for leave to proceed *in forma pauperis*) or other document received by the court which fails to include a certificate of service may be disregarded by the court or returned. A certificate of service may be in the following form:

"I hereby certify that a copy of the foregoing pleading/document was mailed to
_____ **at** _____ **on** _____, 20____."
(Opposing Party or Counsel) (Address) (Date)

(Signature)

6. Except for the initial petition and initial motion for leave to proceed *in forma pauperis*, you must furnish an original and one copy of any subsequent document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the subsequent document returned to you.

7. Exhibits should not be submitted with the petition. Instead, the relevant information in an exhibit should be paraphrased in the petition. **Except**, you should attach to the petition a copy of all final state court written decisions regarding the conviction you are challenging.

8. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address.

9. If you need to change any of the information in the initial petition, you can only do so by filing an amended petition which must also be written on the petition for writ of habeas corpus form. Local Rule LR 15-11 requires that any amended pleading be complete in itself, without reference to any prior pleading. This is because an amended petition supersedes prior petitions; consequently, the amended petition must contain the same grounds as the initial petition--any omitted grounds are dismissed.

10. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. If you do submit a letter to chambers, you must serve a copy on opposing counsel. The only appropriate way to communicate with these persons is by filing a written motion; you must, of course, send a copy of any motion to the attorney representing the defendant(s). The judges of this court, the Clerk of the Court and Deputy Clerks are officers of the court, and as such they are prohibited from giving legal advice. Questions of this nature should be directed to an attorney who is not a member of the court's staff.

B. General Information About Petitions for Writ of Habeas Corpus:

1. To be able to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, you must be challenging the validity of a state court conviction and/or sentence, or the computation of time toward the sentence, and you must be “in custody”. Most petitioners meet the “in custody” requirement because when they file their petition they are being confined based on a state court conviction. However, individuals on probation or parole are still “in custody” within the meaning of the statute.

2. Only one **judgment** of conviction can be challenged in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Therefore, if you have multiple judgments, then each must be challenged in a separate petition.

For example, if you have two judgments of conviction, one from Clark County and the other from Washoe County, then you would have to file two petitions. Also, if you have two judgments of conviction from the same county, but each is from separate proceedings that resulted in two judgments, then you have to file separate petitions (i.e., one for each judgment). But, if you had multiple charges or indictments that were tried together or that were part of a plea bargain, and which resulted in a single judgment of conviction (even though there are multiple sentences), then the validity of the conviction(s) and/or sentence(s) can be challenged in a single petition. The reason only one petition is required is because there is only one judgment of conviction.

3. Because you are challenging the validity of a **state** court conviction in a **federal** court, you need to first challenge the validity of the conviction and/or sentence in the state courts. There are two ways to meet this requirement. The first is to appeal to the Nevada Supreme Court from the trial court. This is called a direct appeal. On the direct appeal you should have argued every reason why you believe the conviction and/or sentence is invalid. The second way to challenge the validity of the conviction and/or sentence is to start a separate proceeding by filing a petition for writ of habeas corpus with the trial court. See § 34.720 - § 34.830 of the Nevada Revised Statutes. Also, ineffective assistance of counsel is the only issue the Nevada Supreme Court will not consider on

a direct appeal. Instead, that claim must be raised in a petition for writ of habeas corpus.

4. A federal court cannot order your release, or alternatively that you be given a new trial or sentencing hearing, unless you have first presented your claims to the state court. Presenting your claims to a state court is called “exhaustion”, which simply means that you have exhausted (or made use of) procedures available in the state courts for challenging your conviction and/or sentence before presenting your claims to a federal court.

To meet the exhaustion requirement you must fairly present your claims to the state’s highest court, the Nevada Supreme Court. Simply raising your claims in the trial court is not enough; you must give the Nevada Supreme Court an opportunity to rule on your claims, and you must present that opportunity in accordance with state procedure. State procedure requires that you file a direct appeal from the conviction to the Nevada Supreme Court, and if appropriate, a post-conviction petition for writ of habeas corpus in the trial court followed by an appeal to the Nevada Supreme Court. See paragraph 3 above for more information about state procedure.

Exhaustion requires that you fairly present to the state courts all of your claims and the facts that support each claim. If you present some claims to the state court, but present new ones (or new supporting facts) in your federal petition that were not fairly presented to the state courts, then the new claims (or facts) are “unexhausted”, and a federal court cannot grant you relief based on these “unexhausted” claims.

5. In a regular civil case, the claims against the defendant are stated in “counts”. But in a petition for writ of habeas corpus, the various reasons you contend the conviction and/or sentence is invalid are stated in “grounds”. Each ground in a federal petition must contend that the conviction and/or sentence is invalid because it was obtained in violation of a federal constitutional right or is contrary to federal law that is applicable to the states. **A federal court cannot review the validity of the conviction and/or sentence unless a federally protected right is involved.**

For example, a state court’s failure to follow state procedural rules, such as the admissibility of evidence, is not something that can be reviewed in a federal petition, unless the failure infringed upon a federally protected right.

6. You are entitled to a federal review of your state court conviction and/or sentence only one time. Once you have had the merits of your grounds reviewed by a federal court, then you cannot commence a second federal action challenging the same conviction and/or sentence. A second action, after the first was reviewed on the merits, is called a successive petition. Note that the successive petition is filed in a second action. Therefore, an amended petition filed in the first action is not a successive petition.

Although there are a few exceptions, rarely will a successive petition be reviewed on the merits. Additionally, before you file a successive petition with this court, you will need to first get permission from the Ninth Circuit Court of Appeals. If you are attempting to file a successive petition, you should review 28 U.S.C. §§ 2244 & 2254 to see whether you will qualify.

7. A federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 must be filed within

one (1) year of the date on which your state conviction became final. The time begins to run when the conviction is final, that is, when the direct appeal process is completed and the state supreme court issues a remittitur. Also, the time during which a properly filed post-conviction petition for writ of habeas corpus is pending in the state courts (both the trial court and the state supreme court) is not counted towards the one year deadline.

*For example, if you waited four months after the direct appeal process before you filed the petition for writ of habeas corpus in the **state** court, then you would have to file your **federal** petition for writ of habeas corpus within eight months after the state post-conviction proceedings were finished. **If you fail to meet the one year deadline, then you may be forever barred from having a federal court review the validity of your state court conviction and/or sentence.***

8. You do not have a constitutional right to the appointment of counsel in federal habeas corpus proceedings. The court has the discretion whether to appoint the federal public defender to represent you in these proceedings. Most cases do not have counsel appointed. If you wish to have counsel appointed, you need to file a motion in which you explain why your case should have counsel.

C. Completing the Petition for Writ of Habeas Corpus Form:

1. Print your name and mailing address on the lines provided. If you have a prison or jail inmate number, be sure to write it on the line provided.

2. Space is provided for your name and that of the person who is in charge of the facility in which you are confined.

3. If you have been sentenced to death and an execution date has been set, then state the date and time of the scheduled execution.

4. Fill-in all of the requested information about your conviction and sentence on the spaces provided. Be sure to write-in the requested dates regarding state court proceedings as well as the date you mailed this petition. If you are in jail, prison or some other type of confinement that prevents you from being able to come to the courthouse to file the petition yourself, then the date of mailing is the date you handed this petition to a correctional officer for mailing to this court. This information is needed to determine the one year filing deadline.

5. The form provides space for asserting three grounds for relief. This is where you specify how the conviction and/or sentence was obtained in violation of your constitutional rights. If you are alleging more than three grounds, attach an additional page for each additional ground (so that there is only one ground per page) and an additional page that provides the information regarding exhaustion of that additional ground. You should make a photocopy of pages 7 & 8 and re-number the ground to #4. Number the additional pages "8-A", "8-B", etc., and insert them immediately behind page 8. Remember, you are limited to a total of four (4) additional pages, which would then add two additional grounds. If you have more than four (4) additional pages, you will need to file with your petition a motion seeking permission from the court to file the petition.

6. To begin, you must identify which constitutional right was violated. **YOU MAY ALLEGE**

THE VIOLATION OF ONLY ONE CONSTITUTIONAL RIGHT PER GROUND. You need to identify which constitutional amendment was violated and which provision of that amendment. For example, if you are alleging that your appointed attorney was ineffective, you would state that your Sixth Amendment right to the effective assistance of counsel was violated. On the space provided, you need to state the facts that support your ground. Using the above example, you need to explain what your attorney did, or did not do, that resulted in you being denied the right to the effective assistance of counsel. In order to avoid a claim that you did not fully exhaust this ground or the supporting facts, you should not change which constitutional right you claim was violated nor add new facts that were not presented to the state courts,

For example, if in state court you contended in a specific ground that your Fifth Amendment rights were violated but did not contend in that ground that your Sixth Amendment rights were violated, then you should not assert a Sixth Amendment right regarding that ground in this federal petition. If you do, respondents may claim that the Sixth Amendment claim in that ground is unexhausted.

7. On the page following each ground you need to explain when, where and how you presented each ground to the state court. This information is needed to determine whether there has been complete exhaustion. Remember, if you have not exhausted a ground, a federal court cannot grant you relief based on that unexhausted ground.

8. You must sign your name and write your prison or jail number (if you have one) on the lines provided at the end of the form. The signature must be an original signature, not a photocopy. Remember the warning at the beginning of these instructions about the requirements of Rule 11 of the Federal Rules of Civil Procedure. If someone wrote this petition for writ of habeas corpus for you (such as an inmate law clerk or "jailhouse lawyer"), then that person must write their name on the line next to your signature.